

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION SERIAL NO. 76/296,778  
PUBLISHED IN THE OFFICIAL GAZETTE OF NOVEMBER 13, 2001

IN-N-OUT BURGER

OPPOSER

v.

REPIN-SKEES, INC

APPLICANT

OPPOSITION NO. 91150584



06-24-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

**OPPOSER'S MOTION TO AMEND NOTICE OF OPPOSITION AND EXTEND THE**  
**DISCOVERY AND OTHER PERIODS**

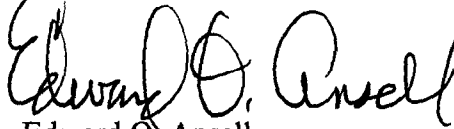
Opposer, by its attorney, hereby moves, pursuant to Trademark Rule 2.107 to amend its Notice of Opposition to add an additional ground for Opposition to Applicant's application Serial No. 76/296,778. Specifically, Opposer wishes to add as Paragraph 7, the descriptive nature of Applicant's mark as an additional basis of Opposition to registration. Further, Opposer hereby moves that if and when this motion is granted, times be reset to afford Applicant time to file a reply to the amended counterclaim, plus an additional sixty (60) days to afford Opposer an opportunity to propound Interrogatories/Requests for Admission to Applicant, and all other time periods to be reset accordingly.

OPPOSITION 91150584  
AMENDED NOTICE  
IOB/CEASE  
2002-06-20

In support of this Motion, Opposer asserts that the rapid nature of Applicant's services in connection with the mark are the subject of widespread commentary of Applicant's restaurant services in print and internet media.

In view of the foregoing, and because this motion is filed before the end of the present discovery period, presently set to close on August 16, 2002, and because an extension of time for discovery is also the subject of this motion, there is no prejudice to Applicant. Therefore, it is submitted that this motion is well taken and that the amended "Notice of Opposition" submitted herewith should be accepted and substituted for the original Notice of Opposition.

Respectfully submitted,  
IN-N-OUT BURGER

  
Edward O. Ansell  
Attorney for Opposer

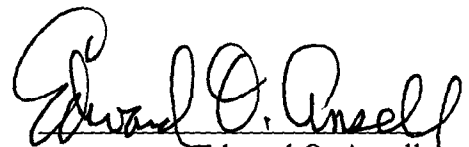
Date: June 20, 2002

Enclosure: Amended Notice of Opposition

PROOF OF SERVICE

I hereby certify that on June 20, 2002, a copy of the foregoing document is being deposited with the U.S. Postal Service, first class mail, postage prepaid, addressed to:

Albert L. Schmeiser  
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Attorney for Applicant

  
Edward O. Ansell

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**MOTION TO AMEND NOTICE OF OPPOSITION AND EXTEND THE DISCOVERY AND  
OTHER PERIODS**

Assistant Commissioner of Trademarks  
BOX: TTAB  
2900 Crystal Dr.  
Arlington, VA 22202-3513

Sir:

Please find enclosed a Motion to Amend the Notice of Opposition and Extend the Discovery and Other Periods, together with an Amended Notice of Opposition (original plus one) with respect to Application Serial No. 76/296,778, RUSH IN RUSH OUT, published in the Official Gazette of November 13, 2001.

Edward O. Ansell  
Attorney for Opposer  
In-N-Out Burger

Date:


Enc. a/s

449 W. Willamette Lane  
Claremont, CA 991711-2646  
Tel: (909) 625-1244; Fax: (909)624-1664  
E-Mail: anselaw@att.net

cc: In-N-Out Burger

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In-N-Out Burger	)	
Opposer	)	
	)	
v.	)	
	)	
REPIN - SKEES, INC.	)	
Applicant	)	
_____	)	

  
**06-24-2002**  
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**AMENDED NOTICE OF OPPOSITION**

Opposer, In-N-Out Burger, a California Corporation, with a business address of 4199 Campus Drive, 9<sup>th</sup> Floor, Irvine, CA 92612, hereby opposes registration of the mark RUSH-IN RUSH-OUT that is the subject of application 76/296,778, published in the Official Gazette of November 13, 2001, and requests that registration to Applicant be refused.

As grounds in support of the opposition, Opposer asserts as follows:

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the term In-N-Out for its restaurant services.
2. Opposer is the owner of the following registrations for the marks IN-N-OUT, IN-N-OUT BURGER and IN-N-OUT BURGERS for restaurant services and carry-out restaurant services, each of said registrations being valid, subsisting, unrevoked and uncanceled:

IN-N-OUT -- 1,085,163; 1,522,799; 1,525,982;

IN-N-OUT BURGER -- 1,031,095; 1,031,096; 1,516,560; 1,528,455; 1,528,456;  
1,539,541.

IN-N-OUT BURGERS -- 1,023,506.

3. Opposer is the owner of the following registrations for the marks IN-N-OUT and IN-N-OUT BURGER for food items associated with its restaurant services, namely cheeseburgers, hamburgers, French fried potatoes, hot coffee, milk, milkshakes, lemonade and soft drinks, each of which is valid, subsisting, unrevoked and uncanceled:

IN-N-OUT -- 1,101,628; 1,101,638; 1,522,799; 1,525,982;

IN-N-OUT BURGER -- 1,031,095; 1,031,096; 1,516,560; 1,528,455; 1,528,456;  
1,539,451; 2,026,720.

4. Applicant has filed an intent-to-use application to register the mark RUSH-IN RUSH-OUT for restaurant services. That application was filed on August 7, 2001, and assigned Serial No. 76/296,778.
5. Applicant's mark so resembles Opposer's previously used and registered marks IN-N-OUT, IN-N-OUT BURGER and IN-N-OUT BURGERS as to be likely, when used in connection with the services set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.
6. Applicant's mark so resembles Opposer's previously used, registered, and famous marks IN-N-OUT, IN-N-OUT BURGER and IN-N-OUT BURGERS as to be likely, when used in connection with the services set forth in Applicant's application, to lessen the capacity of Opposer's said marks to identify and

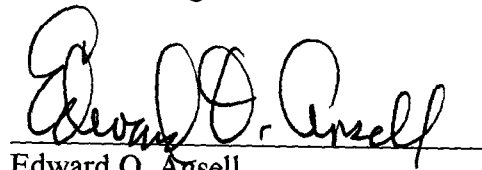
distinguish Opposer's services and goods, regardless of the presence or absence of competition between Opposer and Applicant, or likelihood of confusion, mistake or deception.

7. Applicant's mark is merely descriptive of the services to which it relates because it describes a characteristic, function, feature and purpose of the specified service.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,  
In-N-Out Burger

By



Edward O. Ansell  
Attorney for Opposer

Date:

June 20, 2002

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